

BEFORE THE TENNESSEE STATE DEPARTMENT OF EDUCATION

IN THE MATTER OF

T. B.

vs

No 03-51

SHELBY COUNTY SCHOOLS

FINAL ORDER

This matter came on to be heard on the 22nd and 23rd days of October, 2003 for trial in the offices of the Shelby County School System. When the case was called the following persons were present: T. B., a student in the Shelby County Schools, Ms. [REDACTED] the grandmother and guardian of T. B., they were accompanied by Ms. Rhonda Ewing and Ms. Catina Miller, advocates with Tennessee Voices, a group who works as advocates for children in Tennessee, Mr. Eddie Jones, an employee with School-Trans Transportation, and Ms. Wanda McGrew, a nurse who accompanied T. B. Also present were: Mr. Timothy Smith, Attorney for the Shelby County Schools, Dr. Ashcroft, Ms. Rike, Ms. Kathy Johnson, who is over the nurses in Shelby County and also Memphis City Schools, Ms. Martin, the school teacher, Ms. Kelly Reimann, law clerk for Mr. Smith, Ms. Jo Billanti who joined the hearing at a later time.

The issue to be determined by the court is whether Shelby County Schools is required to provide a Certified Nurses Assistant (CNA) on the school bus while transporting T. B. In the alternative, whether or not T. B. should be place back in the Shrine School in Memphis City Schools.

PROOF

After opening statements, Ms. [REDACTED] called Mr. Eddie Jones as her first witness. Mr. Jones testified that he was employed by a company called School-Trans, a private company which handles specialized transportation needs and has been in business for a three (3) years transporting students to and from schools in the City of Memphis and Shelby county and surrounding areas. He stated that he is technical and operations manager for the company, and he has been in transportation for nine (9) years. All of the busses for School-Trans have medical personnel on board as part of the service provided depending on the particular needs of the children on the bus. He testified that School-Trans has "a little bit more latitude and flexibility

when it comes to [their] busses". (Tr. P. 36)

The testimony of Mr. Jones was that when School-Trans transported T. B. there was a LPN (Licensed Practical Nurse) and a Certified Nurses Assistant (CNA) on the bus, "because there were other kids that required the LPN to be with these kids and T. had to have an RN." (TR 41) He further testified that when there were problems with T. B.'s ventilator, "[we] put an extra person or extra pair of hands on the bus to help the RN." (TR 44) He testified that if T. B. was the only person on the bus they would have had a CNA on the bus, (TR 47) but that under Tennessee guidelines, a CNA is not allowed to do more than an unlicensed assistant can do. (TR 48) Additionally, he testified that if an RN was on the bus with another set of hands this child would be safe. (TR 50) He qualified that answer by saying that it should be a trained set of hands. (TR 52) On re-cross, he further qualified that answer by saying that the person would need to be trained to be familiar with the "go bag" and be of assistance to the RN when taking care of T. B. (TR 62)

Next, the parties stipulated exhibit 1, the letter of Dr. Noel K. Frizzell, into evidence. According to the letter, Dr. Frizzell is general pediatric and adolescent physician. His credentials do not show any specialties concerning any specific areas of medicine. He notes that this student is a quadriplegic and ventilator dependent as a result of severe spinal cord injury requiring a great deal of medical care. He "strongly encourages" that she remain in the Shrine School stating that "[his] fear is that a school that does not have experienced personnel will have a hard time caring for a child as complex as [T.B.]. (Exhibit 1)

Ms. [REDACTED] testified next. She stated that Shelby County Schools did not provide the same services as Memphis City Schools because a CNA was not on the bus when it was to pick up her granddaughter but that School Trans, who transported her, did have a CNA (TR 66-67).

Ms. [REDACTED] testified that the nurse for Memphis City Schools spent some time each day for a couple of weeks at the house getting to know T. B. and how to work with her special conditions.

(TR 67) The testimony from her was that she was happy with School Trans because they came to her house and spent time with her and discussed plans such as emergency plans and other scenarios which made her feel comfortable, but that was not done by Shelby County Schools.

(TR 68) The school system had scheduled to have an LPN on the bus initially when school started. However, the LPN was not on the bus when it showed up to pick up Ms. Slaughter's granddaughter the first day, and Ms. [REDACTED] would not allow T. B. to ride the bus. (TR 69) She stated that it took three years to work out everything with Memphis City Schools. (TR 74)

Memphis City had two other back up nurses trained and Shelby County has not done the same which has caused Ms. [REDACTED] concerns. (TR 74) On cross examination, Ms. [REDACTED] agreed

that Memphis City Schools has a good educational plan in place (TR 77) and with Ms. Martin,

RN. (TR 78) When asked if her big concern was the ventilator, Ms. [REDACTED] agreed (TR 90)

and that T. B. has three batteries for the ventilator that go with her to school. (TR 91) It was

admitted that Ms. Martin, RN, could switch batteries by herself if that was needed. (TR 92) Ms.

[REDACTED] testified that the person who is helping Ms. Martin, RN, on the bus needs to be familiar

with, "everything in that go bag, the proper name for it, what it's used for...", and That person

needs to just be thereto work with Ms. Martin, and "...." take Ms. Martin's directions."....."be

familiar with reviving a person who's not breathing." (TR 101) She stated that the person who

works with Ms. Martin on the bus needs to, "have some kind of certification or qualifications,

not just a person off the bus that's going to be a bus driver and a medical person." (TR 106) The

Court asked Ms. [REDACTED] what qualifications a person who would assist the RN needed to have.

She responded, "Having a CNA rather than having a person who is — doesn't have a label,

knowing that it is a CNA certified by the state, that reassures me that this person is going to be able to react professionally medically and is familiar and prepared for the different emergencies that T. could have rather than training Joe Blow and talking to him and he says, 'Well, okay, I can do this,' and emergency comes up and they find out, 'I don't have the guts for this. I cannot do it, or it's too much.'"(TR 118) She further states, "I've seen licensed nurses and other people back out." (TR 118) She states, " If we settled for less than a CNA, then I would be getting less than what Memphis City offered because T. has been used to riding with a CNA on the bus along with her nurse." (TR 119)

T. B. was then called as the next witness. She testified that when something happens to her ventilator on the bus she feels, "scared". (TR 122) The witness was asked if Ms. Martin, RN, took good care of her to which she responded, "yes", and that she felt safe with her. (TR 128)

This witness concluded the petitioner's proof. The respondent called Ms. Kathleen Johnson as their first witness.

Ms. Johnson testified that she is employed by the Memphis and Shelby County Health Department and is the supervisor of school health services, supervising school nurses and that she consults with private and parochial schools, child care facilities in the area. She is a liaison with the school systems, State Board of Nursing, State Department of Education, and State Department of Health concerning school health issues in the Memphis area having been employed in that capacity for 17 years. She stated that she is the highest ranking person in her area of school health at the department. (TR 131) She further stated that she became a registered nurse in 1969 and maintained an active license the entire time. (TR 132) She further testified that she was instrumental in the development of Tennessee Code Annotated 49-5-415 Assistance in self-administration o medications - Administration of glucagons by volunteers (Exhibit 2) by

actually work with the agencies and legislators who were crafting the legislation of how to provide for children's health care needs.(TR 134) Additionally, she stated that she was involved in the drafting of the State Guidelines for Use of Health Care Professionals and Health Care Procedures in a School Setting (Exhibit 2) which govern use of medical personnel in schools (TR 136) Ms. Johnson testified that under Tennessee Law, a CNA is not a licensed healthcare professional and that any person without any qualifications can do the same things as a CNA that "they are both considered unlicensed assistive personnel....some folks may be referred to as CNAs because they've been through some brief training." (TR 137) She stated that she was familiar with T. B. (TR 132, 133)

She was asked in her opinion if someone familiar with the "go bag" and with the child as provided by the Shelby County Schools. She responded, "yes, I believe they could be met by anybody who had been familiarized with the things in the go bag, the pieces of equipment." (TR 139) Ms. Johnson then testified that Exhibit 3, Transportation Procedure for Nursing Staff Providing School Health Nursing Service for students attending Shelby County Schools, defined the responsibilities of a nurse as well as other personnel involved with a medically challenged student on a school bus and at school.(TR 141) This document states on unnumbered page 3 number 2 under Staff Considerations, "Transportation of identified student(s) and the absence or untimely arrival of the TN (Transportation Nurse) will impact students attending other schools." It further states on unnumbered page 11 under Emergency Procedure for Bus Personnel, "Driver and assistant will assist as needed with the emergency and other students and keep radio contact with the transportation office". Ms. Johnson next testified as to the Shelby County Individualized Health Plan for T. B. and the Memphis City School's Individualized Health Plan for T. B. She was asked if the level of services was comparable and whether they make

appropriate accommodations for her health conditions. She stated that they are and do. (TR 146-147) She further testified that there were appropriate emergency procedures in place that are appropriate to care for the student and if the nurse were to say, "This is more than I can handle," someone else is calling 911. (TR 150) When asked if there was any difference between the services provided by the Memphis City Schools and Shelby County Schools, she responded that there was not. (Tr 157) Later in her redirect testimony, Ms. Johnson testified that the Memphis City School's healthcare plan only provided for a registered nurse and did not call for any other assistant on the bus. (TR 188) The witness testified that she was at the school to conduct in-service training with the staff who would be working with T. B. to train them instruction on the ventilator and tracheostomy specifically concerning T. B. (TR 154-154) Further, she testified that the school system went, "above and beyond what we usually do" by sending the nurse to Ms. [REDACTED]'s house for five to seven days to become familiar all of the student's health care needs. (TR 157-158) School personnel were called back early from their summer vacations to attempt to assist Ms. [REDACTED] with the transition to the new school. (TR 184) On cross examination by Ms. Miller, Ms. Johnson was asked if "the assistant would even understand the terminology". She responded, I absolutely know they would understand the terminology They understand what they need to do to assist as much or more than a certified nursing assistant, and that's based on my years of experience as a nurse and knowing what CNAs are trained to do and what they're not trained to do." (TR 166)

The School System called Ms. Angela Martin, RN, as their next witness.. She stated that she was employed with the Memphis and Shelby County Health Department as a registered nurse. (TR 198) Ms. Martin testified that she had meeting scheduled with Ms. [REDACTED] on August 4th and 7th and as a result of Ms. [REDACTED]'s scheduling problems was unable to meet

with her as scheduled to get acquainted with T. B. on the 11th she met with the family and was shown some of the things that would be required of her. She was asked if she was comfortable that she could safely take care of the child. She responded that she was to an extent.(TR 203-206) She was asked if a CNA was ever present during the week she spent at the child's house. To which she responded, "no". (TR 209) She was also asked if she felt that she could safely take care of T. B. by herself and whether or not she needed anyone else to help her take care of her. Her response was that she could take care of her by herself and did not need anyone else. (TR 209) She testified that there were two in-service trainings with the bus drivers which included some informal testing to make sure they were familiar with the contents of the go bag so they could have some hands on training with the equipment that would be used for T. B's conditions.(TR 215) The assistant had been through an in-service with Kathy Johnson. (TR 217) Ms. Martin further stated that the assistants had two occasions at school where they were required to react to emergency situations with other children and she was impressed with the way they handled themselves and no one panicked. (TR 219) Ms. Martin agreed that she felt that she could safely take care of T. B. whether on the bus with an assistant or at school. On Cross examination, she stated that she has taken care of two other ventilator patients, one of whom was at Cordova school and more fragile than T. B. (TR 232)

Next, Ms. Debbie Rike testified for the school system. She is the transportation supervisor for Shelby County Schools primarily dealing with children with special needs on special ed and regular ed busses driver and bus assistant in-service, routing the bus and information concerning the student for the bus. She has been employed as a special educator since 1978 having an undergraduate and masters degree in special education with certification in special education mental retardation, learning disability sociology and administration

supervision. (TR 241-242)

The driver who is assigned to transport the student has experience transporting a child with a ventilator. (TR 249) Every special ed driver and special ed assistant, the bus lot manager and the bus lot manager assistant were required by Ms. Rike to attend the in-services so that there were back up scenarios in place for transportation. (TR 271) Ms. Rike went to Ms. [REDACTED]'s house and gave her a copy of the transportation handbook and her business card and encouraged her to contact her personally if there were concerns about her granddaughter's safety. (TR 523) Drivers and assistants are required by Ms. Rike to attend a minimum of four in-service trainings each year (TR 256) including CPR training every other year conducted by St. Francis Hospital. (TR 257)

Dr. Wendy Ashcroft, Special Ed supervisor for Shelby County Schools, was the next witness who testified. Her position is the next position in special education below the director of special education. She stated at she has a doctorate in education, a masters and doctorate in special education and an undergraduate degree in psychology with subspecialties in special education, elementary education, mental retardation and administration having been in special education since 1975. (TR 281) She further testified that she is trained in CPR and first aid and certified as a national crisis prevention institute instructor and a professional crisis manager master trainer and other (TR 283)

The final witness called by the school system was Ms. Joe Billanti, director of special education for Shelby County Schools since 1999, the highest ranking official in Shelby County concerning special education. She stated that she has been in special education for Shelby County since 1978 teaching homebound children with multiple and severe disabilities first, gifted children, regular education, then special ed supervisor. (TR 317-318) She testified at length

about the things that the school system did to attempt to make the transition for T. B. as easy as possible. (TR 319-351) After Ms. Billanti testified, the school system rested.

FINDING OF FACT

The Court having heard the testimony of the witnesses observed their demeanor and determined their credibility, reviewed the record and the exhibits, it is the finding of the Court as follows:

1. T. B. is a very bright, polite, personable ten year old female student who suffered a spinal cord injury approximately five years ago which resulted in her being a quadriplegic and requiring her to have a ventilator to breathe and be totally dependant on for all activities of daily living. (Exhibit 4 and testimony of Angela Martin TR 198-199 and testimony of Ms. [REDACTED] TR 198)
2. This student lives with Ms. [REDACTED], her grandmother and legal guardian, who represented her at the due process hearing. Ms. [REDACTED] is an extremely caring, intelligent, determined caregiver who is obviously concerned that her granddaughter receive the best she can receive and who is as protective of her as a lioness of a lion cub. Ms. [REDACTED] has petitioned the Court for an order compelling the Shelby County School System to provide a Certified Nurses Assistant to ride with her granddaughter on the school bus at all times or in the alternative for an order compelling the school system to return the student to the Shrine School, a Memphis City School, where she was previously educated.
3. On May 13, 2003, Ms. [REDACTED] contacted Ms. Joe Bellanti's, Director of Special Education of Shelby County, concerning her granddaughter moving from the Shrine school to Southwind Elementary and bringing the records. A few days

after the conversation, she did bring the records but did not live in Shelby County at that time. Ms. Bellanti's records show that Ms. [REDACTED] was to close on a house in Shelby County on June 6, 2003 but did not have proof of residency in Shelby County. (Testimony of Joe Bellanti TR 320-321, 324) T. B. was later enrolled in Southwind Elementary School.

4. Even though Ms. [REDACTED] and T. B. had not moved into Shelby County, and could not be officially placed in the system, Ms. Bellanti attempted to make preparations for her to transfer into their system making over 60 separate contacts related to the student's transition to Southwind Elementary. (Testimony of Bellanti TR 319-323)
5. In early July 2003, Ms. Bellanti met with Barbara Guffey, Special Education Coordinator at Southwind Elementary, to review T. B.'s file to ensure that her educational needs would be met even though Ms. Guffey is not employed by the school system during the summer months. Ms. Guffey voluntarily gave up her vacation time to attempt to protect this student's educational interest. (Testimony of Bellanti TR 326)
6. Over the summer vacation months and after, Ms. Bellanti had numerous contacts with personnel for Shelby County Health Department in an effort to provide the best Individualized Health Plan would be put in place to protect T. B. To learn more about her, her medical needs and attempt to reassure Ms. [REDACTED], two Shelby County School nurses had been to Ms. [REDACTED]'s home on at least two occasions prior to the first IEP team meeting in early August. Ms. Barbara Duddy, RN and a senior nurse with the health department, visited the home in July and

Ms. Angela Martin, RN, who will be with T. B. while involved in school or on the bus, also visited the home. (Testimony of Johnson TR 184-185 and Testimony of Bellanti)

7. Ms. Martin spent a period of one week at Ms. [REDACTED]'s home learning about her granddaughter's, her particular medical needs and her equipment. (Testimony of Martin TR 204, 206-209 and testimony of [REDACTED]) After two days, Ms. Martin knew what she needed to safely take care of T. B. as far as transportation. (Testimony of Martin TR 208)
8. Prior to the first day T. B. was to be in school, the school system conducted a "test run" trip to the school with T. B., the bus driver, assistant and Ms. Martin. (Testimony of Martin and Testimony of Rike TR 247-248)
9. Memphis City Schools together with the Shelby County Health Department developed an Individualized Health Plan (Exhibit 5) for T. B. while she in the city. Shelby County Health Department nursing supervisor Kathy Johnson, RN, who is in charge of school health for Shelby County, is principally responsible for ensuring that T. B.'s medical needs are taken care of. (Testimony of Johnson TR 131-134) Ms. Johnson continued to be responsible for her medical needs when she enrolled in Shelby County Schools. (Testimony of Johnson)
10. When T. B. enrolled at Southwind Elementary, Ms. Johnson participated in the development of her Individualized Health Plan. The Shelby County Health Plan is equal to or better than that of Memphis City Schools (Testimony of Johnson TR 146) The Individualized Health Care Plan requires an RN be with her and does not call for any other personnel.

11. The primary health concern for this student is that if her ventilator fails she must have a registered nurse who is familiar with her medical history and the contents of her go bag and who can "bag" T. B. to breathe for her until the ventilator is fixed or emergency services arrives. (Testimony of Martin, Johnson and [REDACTED]; Exhibits 4 and 5)
12. Ms. [REDACTED] who has no formal medical training stated that she can "bag" her granddaughter by herself in a few seconds and that once she is bagged she is safe until the ventilator is fixed or emergency services arrives. (Testimony of Slaughter TR 93) Ms. Martin, RN and school nurse, stated she is familiar with the procedure and is able to bag T. B. without assistance. If Ms. Martin needs assistance a trained assistant who has been trained to know the equipment in the go bag is all that is needed. (Testimony of Martin TR 210-217 and 230-231, Testimony of Eddie Jones TR 62) Further, Ms. Martin is confident that she can take care of her without any assistance, but even with assistance, the only one on the bus who can provide any kind of medical treatment is Mr. Martin. (Testimony of Martin, Exhibit 2)
13. While T. B. was attending the Shrine School , School-Trans, an independent transportation company for special needs children, transported her to and from school. (Testimony of Eddie Jones) School-Trans relied on Memphis City School's health care plan to determine what level of medical services was necessary for T. B. which required that she have a registered nurse. (Testimony of Eddie Jones TR 47, Exhibit 5). School-Trans provided the bus, driver for the bus that T. B. rode. They also provided a Certified Nurses Assistant at their discretion

as an "extra pair of hands on the bus to help the RN", and that she was safe with the RN and an extra pair of hands. (Testimony of Eddie Jones TR 44, 62, 63)

Under the IEP, the RN was the only medical person riding the bus (Testimony of Eddie Jones TR 47)

14. Shelby County is providing a bus driver and an assistant who are trained in CPR and have been involved in extra in-service training on this student's "go bag" to assist the registered nurse on the bus to ensure her safety. These people have had sufficient training to assist Ms. Margin in the event of an emergency (Testimony of Johnson 154-155, Rike TR 256-258 and Martin TR 215-216) Additionally, the Shelby County Transportation personnel have attended further in-service training medical support, emergency management and related areas. (Testimony of Rike TR 256-257)
15. While at either the Shrine School or Southwind, Ms. Martin takes care of T. B. without the assistance of any specific licensed or certified personnel. She has never had a CNA assist the RN while on school grounds. (Testimony of [REDACTED] and Martin TR 218) T. B. testified that Ms. Martin takes good care of her and that she feels safe with her. (Testimony of T. B. TR 128)
16. Ms. [REDACTED] testified that for her granddaughter to be safe on the bus, whoever is there to assist the RN must be able to provide the following to Ms. Martin: (1) assist in getting T. B. on the bus, which she stated the bus driver could do; (2) assist securing her on the bus, which she stated the bus driver could do; (3) be capable of calling 911; (4) be familiar enough with the contents of the "go bag" to be able to hand the requested equipment to the RN, and (5) be familiar with T. B.'s

general medical history. (Testimony of [REDACTED] TR 89-106) Ms. Martin and Ms. Rike both confirmed that the assistant who is assigned to her bus is qualified to perform these tasks and that Ms. Rike had tested their knowledge of her equipment. (Testimony of Martin TR 213-214 and Testimony of Rike TR 264)

17. Ms. Johnson testified that the only person on the bus who is qualified to work on the ventilator, "bag" T. B. or the tracheostomy is the registered nurse and that neither a CNA or unlicensed assistant is able to do these things. (Testimony of Johnson TR 138-141)
18. To follow Tennessee law concerning the medical needs of a child with a medical condition, a Transportation Binder must be kept on the student's bus which included specific information concerning the child's condition, care plan, emergency information, emergency contact information including family and physicians and the child's condition and healthcare needs. (Testimony of Johnson TR 140-142)
19. On the first day T. B. was scheduled to attend school, Shelby County Schools sent a bus to Ms. [REDACTED]'s house which had a trained driver and assistant who were CPR certified as well as an RN. The school system had arranged for an LPN to ride the bus that day as well, but as a result of a miscommunication, the LPN was not at the correct location but was at the next stop. Ms. [REDACTED] questioned the driver and the assistant about seeing their certification cards which they did not have with them and apparently were inappropriate in their responses to Ms. [REDACTED]. As a result, Ms. [REDACTED] did not allow her granddaughter to ride the bus that day. (Testimony of Martin TR 216-217)

20. Shelby County Schools has changed the driver who would pick up T. B. and the bus route so that she would be the last person picked up in the morning and the first person dropped off after school to make her ride on the bus as short as possible. (Testimony of Rike TR 267-270) They conducted additional in-service trainings for every potential bus driver, every special ed assistant, and even the bus lot manager and lot manager assistant to make sure they had all possible situation covered as far as personnel who would ride with this child. (Testimony of Rike TR 270-271)

21. Shelby County Schools attempted to do numerous things to make Ms. [REDACTED] feel comfortable, safe and secure with her granddaughter riding on the bus. Ms. [REDACTED] admitted that she was very afraid (Testimony of [REDACTED] TR 70), and that when people are inconsistent, she does not have any trust in them and is scared (Testimony of [REDACTED] TR 71)

CONCLUSIONS OF LAW

1. The first question to be answered is whether or not the Shelby County School System

is providing an appropriate educational program that offers a Free Appropriate Public Education and if so, are they providing the necessary related services. The guardian of a student has the burden to prove by a greater weight of the evidence that the individualized educational program proposed by the school violates the IDEA, McLaughlin v. Hold Public Schools Bd. Of Education, 320 F. 3d 63 (6th Cir. 2003) citing 20 U.S.C.A.

1412(a)(1)(A)(5), 1414(d)(1)(A, B), 1415((b)(6); Knable v Bexley City School District, 238 F.3d. 755(6th Cir. 2001). A school district is not required to provide handicapped

students with each and every available special service which is available to nonhandicapped children. They are required to provide related services or those supportive services which may be required to assist a child with a disability to receive a benefit from his or her education. Id. Citing 20 U.S.C.A. 1401. The test to be applied is whether taken in its entirety, the Individualized Educational Program of the handicapped child is reasonably calculated to enable the child to receive educational benefit, 20 U.S.C.A. 1412 citing Rettig v. Kent City School District, 788 F. 2d 328 (6th Cir. 1986).

Shelby County developed an IEP that has not been questioned as to its educational benefit. "As far as the educational part of it and the plan that Dr. Ashcroft was in on and this IEP meeting as far as academics was superb; no -- I didn't have anything against it. As a matter of fact, it was better than Shrine's" (Testimony of [REDACTED] Tr 285) As a result, the Court moves to the second question, is the school system providing appropriate related services?

Shelby County Schools' Individualized Health Plan provides for a Registered Nurse during the time that T. B. is on the bus and at school. This is the same plan as was implemented by Memphis City Schools. Ms. [REDACTED] has made the claim that Shelby County is not providing the same services as Memphis City claiming that Memphis City provided a Certified Nurses Assistant (CNA) on the bus with her granddaughter. The proof does not support this argument. The testimony of Mr. Jones is that School Trans provided the CNA and that Memphis City Schools provided a Registered Nurse.

Based on the above, the Court needs to determine if by providing an assistant who has been trained by the school system and health department to know the contents of T. B's "go bag" is sufficiently trained to assist the RN on the bus or whether the schools system must provide a

CNA to work with the RN to provide for the safety of this child. Under Tennessee Code Annotated 49-5-415, the State Departments of Education and Health developed Guidelines for Use of Health Care Professionals and Health Care Procedures In a School Setting(Exhibit 2) to govern medical support for licensed and unlicensed personnel which controls medical and nursing procedures in school settings. Under the Guidelines, a CNA and unlicensed assistive person are both classified as "Ancillary Personnel" or unlicensed health care professionals and neither is not qualified to provide any medical services for this child that are required to maintain her safety.


Ms. [REDACTED] believes that because a CNA has some "specialized" training and they will be more able to handle a situation should it arise than a person trained by school personnel. A CNA is not licensed by the State of Tennessee. Based on the Guidelines, both a CNA and unlicensed Assistive Personnel "must complete appropriate training provided by appropriate health care professionals (RN, MD, DO, Dentist) and must have continued supervised by appropriately licensed health care professional (RN, MD, DO, Dentist)." (Exhibit 2) There is no proof in the record that a CNA can provide any more than an unlicensed assistive personnel. The proof actually is that under the circumstances of this student the personnel provided by the schools system can provide the same level of services or better because they have been trained specifically to know the contents of T. B's "go bag".

Ms. [REDACTED] is concerned that a person who does not have a title or some kind of certification or qualifications such as a CNA, they will not have the ability to do whatever is required if an emergency situation arises which will jeopardize her granddaughter's safety. She has stated, "I've seen licensed nurses and other people back out." (TR 118) Although her concerns are completely valid, there is no proof that a CNA or any other trained person will be

able to do anything more than what the personnel who Shelby County has provided. Although the Court is sympathetic with and understands Ms. [REDACTED]'s concerns, based on a very thorough review of the trial transcripts, the testimony of the witnesses and the exhibits the Court can not find in the proof in this record that the Shelby County Schools is providing less than the Memphis City Schools or that Shelby County is not in compliance with IDEA. The Court finds by an overwhelming weight of the evidence that the level of services provided by Shelby County is more than appropriate and that a CNA is not necessary to provide for T. B. and would not be able to provide any more or better services than the personnel provided by Shelby County Schools.

Based on all of the above, the Court finds that at all times material to this matter, T. B. has been offered and afforded a Free and Appropriate Public Education (FAPE) in accordance with 20 U.S.C. 1401 (a) (18) by Shelby County Schools and has complied with the IDEA's requirements to provide T. B., a disabled child, with a Free Appropriate Public Education. The Court further finds that Shelby County Schools developed an appropriate Individualized Health Plan for T. B. and provided the appropriate level of services necessary to carry out the plan by providing a Registered Nurse to be with her at all times in accordance with the plan and an appropriate level of assistive services. The petition of the petitioner is hereby dismissed.

ENTER this the 1st day of December, 2003.



WILLIAM T. AILOR
Administrative Law Judge

Any party aggrieved by this decision may appeal to the Chancery Court for Davidson County, Tennessee or may seek review in the United States District Court for the district in which the school system is located. Such appeal or review must be sought within sixty (60) days of the date of the entry of a Final Order. In appropriate cases, the reviewing Court may order that this Final Order be stayed pending further hearing in the cause.



If a determination of a hearing officer is not fully complied with or implemented, the aggrieved party may enforce it by a proceeding in the Chancery or Circuit Court, under provisions of section 49-10-601 of the Tennessee Code Annotated.

Within sixty (60) days from the date of this order (or thirty [30] days if the Board of Education chooses not to appeal), the local education agency shall render in writing to the District Team Leader and the Office of Compliance, Division of Special Education, a statement of compliance with the provisions of this order.

ENTER this the 1st day of December, 2003.


WILLIAM T. AILOR
Administrative Law Judge

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing document has been mailed in the U. S. Mail, with sufficient postage affixed thereto, to Bill Ward, Staff Attorney, State of Tennessee Department of Education, 5th Floor, Andrew Johnson Tower, 710 James Robertson Parkway, Nashville, TN 37243, **Timothy Smith**, Esq., attorney for school system, 2670 Union Extended, Suite 1200, Memphis, TN. 38112, ; mother of T.B. , Memphis, TN. 38125, on this the 1st day of December, 2003.


WILLIAM T. AILOR